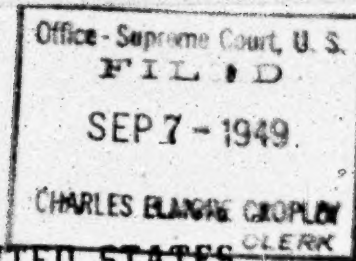


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 77

77

GEORGE W. SOLESBEE,

Appellant,

vs.

R. P. BALKCOM, JR., WARDEN OF THE STATE PENITENTIARY,
TATTNALL, GEORGIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR APPELLEE

EUGENE COOK,
Attorney General of Georgia;

CLAUDE SHAW,
Deputy Assistant Attorney General;

J. R. PARHAM,
*Assistant Attorney General,
Counsel for Appellee.*

SUPREME COURT OF THE UNITED STATES

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GEORGE W. SOLESBEE,

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vs.

R. P. BALKCOM, Jr.,

Appellee

BRIEF FOR APPELLEE

PART ONE

STATEMENT OF CASE

George W. Solesbee, appellant, was sentenced to death by electrocution and while awaiting the sentence to be executed, the Governor gave him a respite which extended over and beyond the date fixed for the electrocution. The Governor also, acting under authority of Section 27-2602 of the 1933

Code of Georgia Annotated, appointed a Commission to examine into the sanity of said appellant. Said Commission so appointed by the Governor, after making said examination, reported to the Governor that George W. Solesbee, the appellant, was sane. The respite granted by the Governor to the plaintiff in error expired on the 8th day of November, 1948, but on November 5th George W. Solesbee was re-sentenced to be electrocuted on November 20, 1948. On November 17, 1948, three days before the date set for the electrocution, Solesbee, by and through his attorneys, Price Brothers, presented to the Honorable M. Price, Judge of the Superior Courts of the Atlantic Circuit, a petition for habeas corpus against R. P. Balkcom, Jr., Warden. Said petition is set out on pages 1, 2, 3, 4, 5 and 6 of the Record. Whereupon, the said judge issued the following order (R. 6):

"The foregoing petition for the writ of habeas corpus read and considered. It is hereby ordered that a copy thereof together with this rule be served upon R. P. Balkcom, Jr. as warden of the penitentiary of the State of Georgia, at Reidsville, Georgia, within the county of Tattnall. It is ordered further that the said R. P. Balkcom, Jr., warden as aforesaid, appear before me at the Court House in Long County, Ludowici, Georgia, on the 27 day of November, 1948 at 11:30 o'clock A. M. and produce at such hearing the body of said George W. Solesbee in order that the legality of his incarceration may be inquired into and determined and also the legality of such authority as the said R. P. Balkcom, Jr. warden as aforesaid, is purporting to execute the death sentence upon the said George W. Solesbee. Ordered further that the said R. P. Balkcom, Jr. warden as aforesaid, be and he is hereby temporarily restrained from proceeding further with execution of said George W. Solesbee until the further order of this Court. This 17 day of November, 1948."

and, as the order shows, the Warden was ordered and directed to appear in Court, at the Courthouse in Long County, Ludowici, Georgia, on the 27th day of November, 1948, and to produce the body of George W. Solesbee.

This was for the purpose of having a hearing on the petition for writ of habeas corpus. The case was sounded for trial, and counsel for the warden interposed a demurrer to the petition upon the following grounds:

1. That there is no cause of action set out in said petition.

2. That if the sentence of death passed by Honorable W. R. Smith, Judge of the Superior Court of the Alapaha Circuit, was void, that this question is now moot as the time for the execution of the said George Solesbee had already passed and it would be necessary for him to be resentenced before he can be put to death by electrocution.

3. The warden says further that there is no conflict between the two Code Sections referred to in Paragraph 5 in said petition; that the method provided by law for inquiring into the sanity of a person already under sentence of death is not in violation of the Constitution of Georgia nor the Constitution of the United States, and that the method provided for does not deprive a person of his life without due process of law.

and the Court entered an order sustaining such demurrer as follows:

"After hearing argument on the within demurrer and after consideration thereof, it is adjudged by the Court that the within demurrer be, and the same is hereby sustained and said petition is hereby dismissed, on the

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ground that Section 27-2602 of the Civil Code affords due process of law to the applicant, which redress was afforded in the instant case by reason of the fact as alleged in said petition; the Governor appointed a commission for the purpose of determining the question of the applicant's sanity or insanity, and said commission rendering a finding that the applicant was sane.

"This being the judgment of the Court, said applicant is hereby remanded to the custody of said respondent.

"At Chambers, Ludowici, Georgia, this Nov. 27, 1948.
(S.) M. PRICE, J. S. C. A. C."

and from this ruling, George W. Solesbee, the appellant, appealed to the Supreme Court of Georgia, in which appeal he contended that the sustaining of the demurrer to his writ of habeas corpus deprived him of his Constitutional rights.

When his appeal reached the Supreme Court of Georgia, the Supreme Court sustained the lower court in its ruling in sustaining the demurrer and remanding appellant to the Warden, and it is from this ruling that the appellant brings his case by appeal to the Supreme Court of the United States in which he prays that the Supreme Court of Georgia be reversed in their ruling.

PART TWO

Argument and Citation of Authority

The appellant does not contend that he did not have a fair trial. He does not claim that his conviction was illegal but does contend that Section 27-2602 of the 1933 Code of Georgia and Section 27-2603 are repugnant to the Constitution of the United States. It is the contention of the appellee, the State of Georgia, that the above Sections of the Code of Georgia do not violate any provision of the Constitution of the State of Georgia nor of the Federal Constitution.

The State further contends that George W. Solesbee is not being illegally detained or being deprived of any of his Constitutional rights. We insist that the Supreme Court of Georgia did not err in sustaining the Superior Court Judge in dismissing Solesbee's writ of habeas corpus.

We cite the following cases :

Baughn v. The State, 100 Ga. 554, 559 (28 S. E. 68) (38 L. R. A. 577) ;

Mallory v. Chapman, 158 Ga. 228, 231 (122 S. E. 884) ;

Gore v. Humphries, 163 Ga. 106, 111 (135 S. E. 481) ;

Smith v. Henderson, 190 Ga. 886 (2) (10 S. E. 2d, 921) ;

Fowler v. Grimes, 198 Ga. 84, 94 (31 S. E. 2d, 174).

The appellant contends that he is being deprived of his Constitutional rights because there is no provision of Georgia Law under which he may appeal from the decision of the Commission appointed by the Governor to examine into his sanity. The State of Georgia submits that there is no merit to this contention since the law of Georgia makes no provision for such appeal. No person who has been convicted of a capital offense shall be entitled to any inquisition or trial to determine his sanity.

The appellant contends that the Commission appointed by the Governor was not a judicial determination of the question of his sanity and that to refuse him the right of appeal from said Commission would be denying him of his Constitutional rights.

The State of Georgia contends that he was not entitled as a matter of law, to the right of appeal from said Commission and we cite the following Federal cases :

Dreyer v. Illinois, 187 U. S. Rep. 71 ;

Reetz v. Michigan, 188 U. S. Rep. 505.

WHEREFORE, the appellee, the State of Georgia, prays that the judgment of the Supreme Court of the State of Georgia be sustained.

Respectfully submitted,

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